BAIL SLIP

The Appellants/Accused 1 to 3 namely Aiyyanar, Sekar, Chellappan were directed to be released or bail by the Order of this Court dt:30.4.1999 made in Crl.M.P.No.3227/99 in C.A.No.339/99 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.07.2005

Coram

The Honourable Mr.Justice N.DHINAKAR

and

The Honourable Mr.Justice M.CHOCKALINGAM

Crl.A.No.339 of 1999

1. Aiyyanar
2. Sekhar
3. Chellappan ...Appellants/Accused 1 to 3

-vs-

State,
the Inspector of Police
Kadampuliyur ...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of CrPc against the judgment of the learned Principal Sessions Judge, Cuddalore dated 1.4.99 in S.C.No.185 of 1998 convicting the appellants of the offences under sections 302, 302 read with 34, 326 and 324 IPC and sentenced to undergo rigorous imprisonment for life and various terms of imprisonment for other offences.

For Appellant : Mr.B.Sriramulu, Senior Counsel
for Mr.K.P.Ananthakrishna

For Respondent : Mr.S.Jayakumar
Addl. Public Prosecutor.

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JUDGMENT

[The Judgment of the Court was delivered by
M.CHOCKALINGAM,J]

The appellants, three in number, have brought forth this appeal aggrieved over the judgment of the learned Principal Sessions Judge, Cuddalore in SC.No.185 of 1998, where they stood charged and tried for the following offences and they were found guilty and awarded punishment as stated below.

(i) The first accused was charged for an offence under section 302 IPC, found guilty and sentenced to undergo life imprisonment.

(ii) The second accused was charged for an offence under section 326 IPC, found guilty and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.2000/-, in default of which to undergo one year rigorous imprisonment.

(iii) The second and third accused were charged for offences under sections 302 read with 34 IPC and 324 IPC, found guilty and sentenced to undergo life imprisonment for 302 read with 34 IPC and six months simple imprisonment for 324 IPC.

(iv) The third accused was charged for offences under section 324 IPC in five counts, found guilty and sentenced to undergo simple imprisonment for each count.

(v) The sentences imposed upon the second and third accused are ordered to run concurrently.

2. The case of the prosecution as put forth before the trial court can be stated thus:-

(a) P.Ws.1, 5 to 9 belonged to Melirrupu Village, while the appellants/accused 1 to 3 belonged to Semmedu village, which is one kilometer away and on the north of Melirrupu Village. On 21.3.1994, at about 3.00 p.m. at Panruti Bus Stand, P.W.5 had a quarrel with the first accused in sharing a seat in a bus parked in the bus stand. Aggrieved over the same, the first appellant brought four auto drivers and assaulted P.W.5. P.W.5, on coming back to the village, informed to the villagers and they wanted to question the first accused in that regard. P.Ws.1,5 to 9 and others went to Semmedu Village at about 10.00 p.m. where they found accused 1 to 3 sitting outside the house of the first

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accused and chatting with each other. They questioned about the conduct of the first accused on that evening at Panruti bus stand. Immediately, the first accused assaulted the deceased Vellakannu with M.O.1, knife on his left side of the head and the second accused assaulted the deceased with M.O.2 on his lower jaw, and the first accused attacked P.W.7 with M.O.3, stick. At that time the witnesses also retaliated. The second accused cut P.W.6 and one Sekar with knife M.O.2, and the third accused attacked P.W.8, one Chelladurai and one Tamilselvan with M.O.3, stick. The accused left the place of occurrence with the weapons.

(b) Injured were taken to the Panruti Hospital. P.W.2, an Assistant Surgeon attached to the Government Hospital, Panruti examined P.W.5 at 1.35 a.m on 22.3.1994 and issued Ex.P2 wound certificate narrating the injuries and he examined P.W.6 at about 1.45 a.m., P.W.1 at 1.50 a.m. and P.W.7 at 1.50 a.m. and issued wound certificates Exs.P3, P4 and P5 respectively where the injuries sustained by them are narrated. On 21/22.3.1994 at about 00.10 hours, P.W.2 examined the first accused and gave treatment for the injuries and issued wound certificate Ex.P6. He also examined accused 2 and 3 at the same time and issued wound certificates Exs.P7 and P8 respectively. P.W.3, an Assistant Surgeon, Government Hospital, Panruti examined P.W.9 at 8.25 a.m., on 22.3.1994 and issued wound certificate Ex.P9. P.W.4, Radiologist attached to Government District Headquarters Hospital, Cuddalore, took X-ray for P.W.1 and issued M.O.5, X-ray report.

(c) P.W.14, Sub Inspector of Police, Kadampuliyur on receipt of information, proceeded to the hospital at 3.00 am and recorded the statement Ex.P1 from P.W.1. On the strength of Ex.P1, he registered a case in Crime No.152/94 under sections 302, 324 and 323 IPC and printed express First Information Report Ex.P19 was sent to the Court. On 24.3.1994 he took up investigation. He examined A1 and recorded his statement under Ex.P20 and on the strength of the same he registered a case in Crime No.154/94 and printed First Information Report is Ex.P21. Investigating Officer referred the case in Crime No.154/94 as one of mistake of fact on the very day.

(d) P.W.15 the Inspector of police, took up investigation in Crime No.152/94. He proceeded to the place of occurrence on 22.3.1994 at about 7 a.m. In the presence of two witnesses he made an inspection and prepared Ex.P12, an observation mahazar and Ex.P13, a rough sketch. He conducted inquest on the body of the deceased in the presence of panchayatdars and witnesses between 8.30 a.m. to 11.30 a.m. and prepared Ex.P22, inquest report. He recovered M.O.6, bloodstained earth and M.O.7, sample

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earth under a mahazar, Ex.P14. A requisition Ex.P17 was sent to the Government Hospital, Panruti along with the dead body of the deceased Vellakannu for conduct of autopsy.

(e) P.W.13, an Assistant Surgeon, attached to the Government Hospital, Panruti, on receipt of the requisition, conducted autopsy on the dead body and found the following injuries:-

> 1. An incised wound over the left side of the head, situated obliquely, extending from left eyebrow to the left parietal region about 10 cms in length, margins regular, gaping in the middle, depth upto the brain and the wound margins are tapering towards the parietal region.
>
> 2. An incised wound over chin, obliquely situated 5 cms in length, margins regular, gaping in the middle exposing the tooth.
>
> 3. An incised wound obliquely situated below the chin 3 cms in length, margins regular, depth ½ cm, breadth about ½ cm.
>
> 4. Abrasion over right leg size 2X1 cms.
>
> 5. Lacerated injury of 4 cm x ½ cm over the back of right shoulder.
>
> 6. Abrasion 3 x ½ cm over back of right side chest.

The Doctor has issued a postmortem certificate Ex.P18 and has opined that the deceased would appear to have died of shock and haemorrhage and brain injury and death would appear to have occurred 16 to 20 hours prior to post mortem.

(f) During the course of investigation, the Investigating Officer arrested the first accused on 24.3.1994. The first accused gave a confessional statement and admissible portion is marked as Ex.P10. Following the same, he produced M.Os.1 to 3 which were recovered under a mahazar Ex.P11. All the material objects were despatched to the Court with a requisition to send them for chemical analysis. Accordingly, they were subjected to chemical analysis, and Ex.P27 and Ex.P28, serologist's reports were received by the Court. On completion of investigation, the final report has been filed by the Investigating Officer in the said crime number.

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3. The case was committed to Court of Sessions. Necessary charges were framed against the appellants/ accused.

4. In order to substantiate the charge levelled against the accused, the prosecution examined 15 witnesses and relied on 29 exhibits and 10 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which they flatly denied as false. Neither a witness was examined nor a document was marked on the side of the defence.

5. After hearing the arguments advanced by both sides, and on scrutiny of the materials available on record, the trial Court found the accused guilty as per the charge and awarded punishment referred to above, which is the subject matter of challenge in this appeal.

6. The senior counsel appearing for the appellants inter alia made the following prime submissions:-

(i) According to the prosecution, the occurrence is said to have been taken place due to a quarrel between P.W.5 and the first accused at the Panruti bus stand at about 3.00 p.m. on 21.3.1994. In order to question about the same and to put the matter before the Panchayatdars, P.W.5, deceased and others went to Semmadu Village, the place of the accused. From the evidence, it could be seen that at about 10.00 p.m., number of persons, not less than 40 or 50, have gone to the house of the accused, but none of the witnesses or the deceased went to the panchayat. This would indicate the fact that they have not gone for any panchayat but they were the aggressors.

(ii) All the three accused were treated by P.W.2, the doctor, on the very day on 21/22.3.1994 at 00.10 hours, in respect of the injuries sustained by them, and wound certificates have also been marked as Ex.P6, P7 and P8. A perusal of the same would clearly indicate that the accused sustained lacerated injuries also and these injuries, if to be caused by the witnesses and the deceased, they should have gone to the place of occurrence armed with weapons, as the injuries could not have been caused with hands. Further on the very same day, at that time, it is pertinent to point out that all these three accused were chatting in front of the house of the first accused. Even as per the prosecution case, no one could expect the witnesses and their villagers to come to their place at that time and thus the accused should have been sitting and conversing with each other unarmed. Under these circumstances, the accused/appellants were constrained to defend themselves and

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thus in exercise of self defence, the injuries should have been caused to the witnesses. In the instant case, immediately after the occurrence, the accused have also gone to the hospital. They were also treated and wound certificates have also been marked, where they have spoken to the fact that 40 to 60 persons came to the place of occurrence with knife and stick.

(iii) It is further to be pointed out that according to the prosecution witnesses, the occurrence had taken place before Easwaran temple. Nowhere in the sketch or in the mahazar, Easwaran temple is shown. Thus it can be concluded that the place of occurrence seems to be different and this has fatally affected the prosecution case.

(iv) Added further, the prosecution has not explained the injuries found on the accused. P.W.7 and 8 have spoken to the fact that no injuries have been caused to the accused. But, in fact, it is evident that the injuries were caused to the accused. The injuries sustained by the accused were not explained by the prosecution anywhere.

(v) Added further the learned senior counsel that in the instant case the investigation was not properly conducted. It is an admitted position that the Inspector of Police, who conducted investigation has categorically admitted that a case came to be registered at the same police station on the strength of the statement given by the first accused in crime No.154/94. If it be so, then the case should have been investigated. From the evidence of the Investigating Officer, it is clear that the case was referred to as one of mistake of fact on the very day. He has also further admitted in his evidence that he has not examined any witness in the place, which would clearly indicate that he acted with predetermination to close the case. It shows the fact that the investigation was not only properly done and it is an improper investigation done by the investigating officer.

In view of the above flaws and lacunas, the judgment of the lower court has got to be set aside. As such, the accused are entitled for acquittal.

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7. Heard the learned Additional Public Prosecutor on the above contentions.

8. It is not in controversy that one Vellakannu died at the time of occurrence that took place on 21.3.1994 at about 10.00 p.m. in the village of Semmapudu. It has to be pointed out that he died due to homicial violence. Sufficient evidence has been brought forth by the prosecution through the Doctor, who

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conducted autopsy, and also through postmortem certificate, Ex.P10, issued by him, and the same is also not disputed by the appellants either before the trail court or before this Court. Accordingly, it could be safely recorded that Vellakannu died out of homicidal violence.

9. In the instant case, the accused have been facing number of charges before the lower court and they were also found guilty as per the charges. After careful scrutiny of the available materials and on hearing the submissions of both sides, it is highly doubtful whether the prosecution has brought forth a case connecting the accused with the crime.

10. The prosecution has come forward to state that there was a quarrel between the first accused and P.W.5 at Panruti bus stand in sharing a seat in a bus. Immediately, the first accused brought four auto drivers and attacked him. Subsequently, P.W.5 went to the village and informed the villagers and they wanted to question the conduct of the first accused. It is pertinent to point out that the witnesses and the deceased were belonging to the place of one Melirrupu, which is situated one kilo meter away on the south of Semmadu, to which place the accused party were belonging. At about 10.00 p.m. the witnesses and deceased along with others went to the place of accused. It is pertinent to point out that these persons went to the Semmadu Village at about 10.00 p.m. During that time they found A1 to A3 sitting in front of the house of the first accused and chatting with each other. Thus it would be clear that no one can expect the witnesses, deceased and others to come to their village at that time to keep themselves armed. Thus it would be indicative of the fact that the persons were conversing with each other unarmed. At this juncture, it has to be pointed out that the wound certificates of A1 to A3 have been marked as Exs.P6, P7 and P8. According to P.W.2 he examined all these three accused at 00.10 hours on 22.3.2004 and the wound certificates in their regard are Exs.P6 to P8 respectively. A perusal of those certificates would clearly indicate the fact that they sustained lacerated injuries. In such circumstances, a duty is cast upon the prosecution to show, how these lacerated injuries were sustained by the accused. In the instant case, the prosecution witnesses have not spoken anything about the way in which the accused sustained injuries. But on the contrary they would plead no knowledge about the same. The injuries sustained by the accused at the time of occurrence would clearly indicate that these witnesses and deceased along with others, from their village at Melirrupu, went to the other village Semmadu with weapons. Otherwise, such injuries could not have been caused and thus, this Court has to necessarily agree with the submissions of the learned senior counsel for the appellants that the

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witnesses and others are aggressors at that time and not the accused.

11. The place of occurrence, according to the prosecution is in front of the house of the first accused. But all the witnesses have spoken to the fact that the occurrence has taken place before Easwaran Koil. But it is a matter of surprise that neither in the mahazar nor in the rough sketch, the said Easwaran temple is shown and it is highly doubtful whether these documents prepared by the Police Officer, who visited the spot, have come into existence.

12. The next contention is that from the evidence available, it could be seen that the prosecution has neither examined nor recorded the statement of independent witnesses before the Court. Yet another circumstances which in the opinion of the Court is in favour of the appellants, is that the Investigating Officer has categorically admitted in his evidence that on the strength of the statement given by the first accused, he registered a case in Crime No.154/94 on 24.3.1994 against the witnesses. Again, it is pertinent to point out that the Investigating Officer has admitted the fact that he referred that case as mistake of fact on the very day. He has also admitted that he has not examined any witnesses in that regard. It is not only a proper investigation but also adds strength to the defence that the police agency did not bring forth the truth of the case before the trial court.

13. The further case of the prosecution that the witnesses, the deceased and others went to the place of the accused for the purpose of Panchayat is also falsified from the evidence. It is an admitted position that the village of Melirrupu is situated on the south of Semmadu, i.e. one kilometer away. From the rough sketch it could be seen that the house of the first appellant is situated interior in the village. It is admitted by the witnesses that they did not attend any panchayat that day or informed the villagers, but they have gone directly to the house of the accused. This would indicate the fact that the witnesses and the deceased along with others have gone to the place of the accused armed not for the purpose of panchayat but with an aggressive attitude. In such circumstances, there should have been a fight between the groups, which, as rightly pointed out by the learned Senior Counsel for the appellants, was only in exercise of self defence by the accused, who remained unarmed, and the injuries should have been sustained by the witnesses.

14. In view of the lacunas found in the prosecution case, it cannot be stated that the prosecution has proved the case

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beyond all reasonable doubts. But the lower court has been carried away by the fact that in the occurrence one person died, and it has caused prejudice, and thus the accused have been found guilty. The evidence as discussed above would clearly indicate that it is unsafe to find the accused guilty. The order of the lower court has got to be necessarily set aside, and accordingly, the accused are acquitted of the charges levelled against them.

15. In the result, the appeal is allowed setting aside the judgment of conviction and sentence passed by the lower Court.

16. It is reported that the appellants are on bail. Hence, the bail bonds executed by them shall stand cancelled. The fine amount, paid by the second appellant will be refunded to him.

Bg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. The Principal Sessions Judge, Cuddalore.

2. The Judicial Magistrate, Panruti.

3. -Do- Thro' The Chief Judicial Magistrate, Cuddalore.

4. The Inspector of Police, Kadampuliyur.

5. The District Collector, Cuddalore District.

6. The DGP, Chennai

7. The Public Prosecutor, Chennai.

8.The Superintendent of Police, Central Prison, Cuddalore.

+1 CC to Mr.K.P.Ananthakrishan, Advocate, SR No.29701.

JE(C.O)
BG/29.07.2005.

Crl.A.No.339 of 1999

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